

INTERSTATE COMMERCE.

SPEECH

OF

HON. CHARLES E. BOYLE,

OF PENNSYLVANIA,


IN THE

HOUSE OF REPRESENTATIVES,

TUESDAY, DECEMBER 9, 1884.

WASHINGTON.

1884.



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*From the Hon. C. E. Boyle
m.c.*

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Tuesday, December 9, 1884.

The House having under consideration the bill (H. R. 5461) to establish a board of commissioners of interstate commerce and to regulate such commerce—

Mr. BOYLE said:

Mr. SPEAKER: It is not my purpose to discuss what may be considered the general questions involved in the legislation proposed by both the bill of the Committee on Commerce and the substitute for a part thereof proposed by the distinguished gentleman from Texas [Mr. REAGAN]. These have received very full consideration, and have been very exhaustively examined by the gentlemen who have preceded me in this debate. I shall undertake no more than to speak of some of the provisions of these bills, to inquire as to how far they may be efficacious toward remedying the evils against which they are directed, and which are admitted to exist in some degree, and as to the probable results and consequences of the legislation proposed.

What are the provisions of these two bills, and what are the differences between them? Both are founded upon that clause of the Constitution which gives to Congress power "to regulate commerce with foreign nations, and among the States, and with the Indian tribes." And the advocates of both find in this clause warrant for the General Government to interfere between shippers and carriers by rail as to all traffic and commerce crossing State lines, and to provide by statute what shall be the relations between them, what shall be the rates charged, in what manner the business shall be conducted, what shall be the measure of damages for breaches of duties imposed, and in what way the penalties and punishments provided for may be collected and

inflicted. Regarding railroads carrying such freight as instrumentalities of commerce among the States, in the language of Supreme Court decisions, they assert the same power to control them, and, of course, to the same extent, that Congress has heretofore exercised over other instrumentalities of commerce.

Both bills require that all rates shall be reasonable; and so does the common law. Both bills prohibit discriminations between shippers "for like and contemporaneous services" in carrying freight, &c., "under substantially similar circumstances." So, in my judgment, does the common law, if such discrimination be unjust or unreasonable. The committee bill denies the right to allow rebates, drawbacks, &c., to one shipper which are refused to another "under similar circumstances." The substitute prohibits all rebates, drawbacks, &c., whatever. So does the common law, if such rebates and drawbacks are the means of producing unreasonable inequalities and discriminations among shippers. Both bills prevent the pooling of freights by competing railroads "by dividing between them the aggregate or net proceeds of the earnings of such railroads, or any portion of them." The common law does as much, and, in my judgment, much more.

The committee bill gives a civil remedy for actual damages sustained, and in case of willful violation of the law gives, in addition, to the party injured a sum "sufficient to cover all his counsel and attorney fees, and all expenses and disbursements in the action, including his own necessary personal expenses." The substitute gives triple damages, and for willful violation a sum in addition sufficient to cover all counsel and attorney fees. The common law in these cases, as in all others, awards to the injured party actual compensation for the injury suffered, together with costs. The bill of the committee makes all violations of the law, except the charging of unreasonable rates, crimes, punishable by a fine not exceeding \$1,000; the substitute makes no exception, and provides that the fine shall not be less than \$1,000, without providing a maximum limit—a rule for punishments which I do not know to exist in any other case. The committee bill provides for a commission, and a remedy by injunction to prevent continuance of acts prohibited by the bill; the substitute goes only to the extent of supplying the first seven sections of the committee bill, leaving the provisions for a commission undisturbed; and as it also gives a remedy in equity, should the bill, with the substitute, be adopted, we will have double remedies in equity, which will probably be more than are desired. The substitute goes further, and prohibits the charging of more for a short than for a longer haul, and requires the posting of schedules and strict adherence to them. There may be other provisions which I now overlook, but they are not material to this discussion.

As I have said that the first section is only declaratory of the common

law, I object to it only on the ground that it is an assertion of the power of Congress to regulate and determine the rates at which railroads shall carry what is called "interstate commerce." If Congress may require that rates shall be reasonable it may also determine what are reasonable and what unreasonable rates, and may thus fix rates and assume entire control of the whole matter. I may refer further to this before I conclude.

The second section of the committee's bill forbids discrimination in charges between one shipper and another engaged in interstate commerce "for like and contemporaneous service in the carrying, receiving, delivering, storing, or handling the same under substantially similar circumstances;" and it also requires equal facilities to be given, subject to the same provisions. And the third section prohibits the allowance of rebates, drawbacks, or other advantages in any form to any one person which are not allowed under similar circumstances to all other persons.

Former bills on this subject, as I understand, were limited to freight by the car-load. These have no such limitation. Is it intended that all shippers of the same article are to have the same rates without regard to the quantity? Is the man who ships five barrels of flour to pay no more per barrel than the man who ships a car-load or ten car-loads? Must a single box of dry goods be charged for at the same rate as a car-load? Shall the firm which ships only five car-loads of coke a day from the Connellsville coke region pay no more per car than the firm which ships three hundred car-loads every day? Is the party who ships ten car-loads one day and ten car-loads some other day, irregularly and at uncertain times, to have the same rates and the same facilities as the party who is ready with his three hundred car-loads every day? In other words, are shipments of the same article in such different quantities and with such differences as to regularity "like and contemporaneous services, * * * under substantially similar circumstances?" If not, then matters will remain just as they are.

The complaint is that railroad companies discriminate by rebates, drawbacks, &c., in favor of large shippers and against small ones—in favor of regular customers and against those for whom they carry only occasionally. The chairman [Mr. REAGAN] has stated that he left out the provision as to car-loads at the instance of jobbers, so that the bill might apply to quantities less than car-loads. He must mean that the man who ships a car-load or less than a car-load is to be charged no more than the man who ships a much larger quantity, or he must allow discriminations to be made. Is it to be one hundred pounds against another hundred, one car-load against another, one ten car-loads against another? This is utterly impracticable. And if you

allow discriminations on account of quantities and of regularity of shipments, where will you stop?

Mr. CHACE. Am I not right in saying that both bills use the term "like?" Are they not identically the same in that respect?

Mr. BOYLE. The substitute, as I remember, does not contain the qualifying clause "under substantially similar circumstances." The other clause is the same in both bills.

Mr. STEWART, of Vermont. The word "substantially" is included in the bill of the committee. There is a modification of the language of the bill itself. It is for "substantially like service."

Mr. FINDLAY. "Substantially similar service."

Mr. STEWART, of Vermont. Yes, sir; "substantially similar service."

Mr. CHACE. It is true, then, as I have stated, that both bills use the word "like."

Mr. STEWART, of Vermont. Yes; they use the word "like;" but the bill also uses the word "substantially," which enlarges its scope.

Mr. CHACE. The committee bill goes a little further in its application.

Mr. STEWART, of Vermont. It was so intended.

Mr. CHACE. Then it is open to the gentleman's criticism.

Mr. BOYLE. I do not know how that may be. It is difficult to distinguish between what is "like" and what is "substantially like." That will be matter for the courts; that is, if any person who thinks himself injured can, under the provisions of this bill, ever get into the courts.

The last clause of the fourth section is understood to prohibit pooling. It prohibits only one kind of pooling; that is to say, it forbids railroad companies to pool "by dividing between them the aggregate or net proceeds of the earnings of such railroads or any portion of them."

"Pooling," as I understand it, is resorted to by railroad companies for the purpose of preventing a reduction of rates by competition. The name and this particular manner of accomplishing that end are of modern origin. I have heard it said that the gentleman so frequently referred to in this debate, Mr. Albert Fink, is entitled to the credit of devising this particular form of combination. But the practice of combining to keep up rates is older than Mr. Fink, and is, as I have stated my belief, contrary to the common law. I know, sir, that "pooling" by men who earn their living by their labor, for the purpose of keeping up its price, has been held not only a civil wrong but a crime. It may be that there is a different rule of law for railroad companies; but so far as I know, no court has yet undertaken to show wherein lies the difference, if difference there be.

Railroad-men are credited with a full share of ingenuity. Prevent them from keeping up rates by combining and dividing the aggregate or net proceeds of their earnings, and they will very quickly find some other means to accomplish the same result not within the terms of your bills. You leave them full liberty to combine together to keep up rates by any other means than this one. You might as well forbear all reference to the matter whatever.

HOW FOUR RAILROADS WILL BE AFFECTED.

Assuming that these bills go beyond the common law in the matter of the wrongs prohibited, as must be maintained by those who advocate them, and as they certainly do in some other particulars, what will be their effect? Their avowed purpose is to establish equality between shippers. I presume it is not intended to establish inequalities between railroad companies and to impose burdens upon some from which others, under similar circumstances, will be relieved. Let us see what will be their effect in this respect.

The committee's bill provides "that all charges by any person or persons engaged alone or associated with others in the transportation of property by railroad from one State or Territory to or through one or more other States or Territories of the United States, or to or from any foreign country, shall be reasonable." These words, as descriptive of the persons within the purview of the bill, are referred to in every other part of it, and are substantially the same as those used in the substitute.

Take four of the great trunk lines, which are largely engaged in carrying what is called interstate commerce. First, the New York Central road, alluded to by the gentleman from Michigan [Mr. HERR]. Its terminal points are Buffalo, on the lake, and the city of New York. It is entirely within the State of New York. Of course to any business originating at or between these terminal points, and not going beyond them, the provisions of these bills will be inapplicable. But more than this, they will not in any degree affect any of the immense traffic from Chicago or any of the lake ports to Buffalo, and from there to New York by the Central road, for the reason that this bill does not deal with interstate commerce carried by water, and so far as this railroad carriage is concerned it begins and ends within the State of New York, and does not go out of it. As to this enormous lake traffic, as to all the traffic originating at Buffalo and other points along the line and going east; as to all traffic originating at New York and along the line and going west to Buffalo, and thence by the lakes to Toledo, Detroit, Chicago, Milwaukee, or to any other point in the great West, the New York Central Company will be independent of this legislation. It may charge rates reasonable or unreasonable. It may grant rebates, drawbacks, or

resort to any other device to give to one shipper preference over another. It may discriminate between shippers and between localities in any manner and to any extent it may deem proper, so far as this legislation is concerned, and snap its fingers in the faces of your commissions and your courts.

Now consider the Erie Railway. Its terminal points are Dunkirk and Buffalo on the lake and New York at tide water. It is engaged in precisely the same kind of trade as the Central, and is practically a parallel road. But unfortunately it crosses a small corner of Pennsylvania. In the language of the bill it passes from one State through one other State; and by reason of that fact is made subject to all the provisions, pains, and penalties of this measure. What the New York Central may do legally, the Erie may not do without a breach of the law. What a Central director or a Central agent may do with impunity would make an Erie director or agent a criminal, and subject him to a fine of unlimited amount, by the substitute, not less than \$1,000, and his company to triple damages, and to costs and expenses at the discretion of the complaining party.

There are two other roads in like circumstances, and which afford a like striking instance of the gross injustice which will follow this legislation—the Pennsylvania Railroad and the Baltimore and Ohio. The main line of the Pennsylvania runs from the Delaware at Philadelphia to the Ohio at Pittsburgh. The company owns or controls the Philadelphia and Erie, from the port of Erie to its main line at Harrisburg. It controls the Allegheny Valley, from the oil regions of Pennsylvania to its main line at Pittsburgh. All these are wholly within the State of Pennsylvania. It passes through the gas-coal region and the coke region of Western Pennsylvania. It connects with the Ohio River at Pittsburgh, and is there fed by the immense traffic which is gathered from all the great rivers of the West and brought to Pittsburgh. It connects those great freight-producing cities, Philadelphia and Pittsburgh.

Now, take the Baltimore and Ohio. Its main line runs from the bay at Baltimore to the Ohio River at Wheeling. It has a branch from Grafton to Parkersburg, also on the river. It practically owns and actually controls another line or branch from Cumberland to Pittsburgh. It also traverses the gas-coal region and the coke region of Western Pennsylvania, and connects the great freight-producing centers of Pittsburgh and Baltimore. It gathers traffic from the commerce of the Ohio River at Wheeling and Parkersburg. It also has connections with the oil regions of Pennsylvania by means of the Pittsburgh and Western. I need hardly say to gentlemen what quantities of freight originate at the points named and are carried by these companies. From the Conneville coke region alone, when the ovens are in operation, there are

sent nine hundred car-loads of coke a day; most of it, it is true, going West, but much of it going East over these roads. I can not state what goes from other points, or from other sources, but I know it to be enormous.

As to all this traffic the Pennsylvania road will not be subject to any of the provisions of this bill, while the Baltimore and Ohio will be as to all and every part of it. The Pennsylvania may deal with shippers as it may please; it may discriminate as it may think proper, and grant such favors and impose such burdens as to it may seem good; it may build up one man and break down another, with no act of Congress to molest or make it afraid; while the Baltimore and Ohio, as to all this traffic, will be tied hand and foot. It must treat all this freight as interstate commerce. It must make it stand upon the same footing precisely as the freight which it carries from Chicago, from Saint Louis, from Cincinnati, from any part of the boundless West—giving to one no advantage over the other, and imposing no burdens upon one which it does not impose upon the other. It can not discriminate between these freights, while the Pennsylvania can. It can not distinguish between freights coming to it by rail from other States, and those before referred to, while the Pennsylvania can. Its officers become criminals for doing what Pennsylvania officials may do without impairing their reputation as honest men.

And why this difference? The Pennsylvania road and its feeders I have named are all within the State of Pennsylvania, and the commerce which comes to it from the Ohio River comes by water and not by rail. The Baltimore and Ohio and its feeders, on the other hand, pass through Maryland, West Virginia, and Pennsylvania—they pass “from one State to or through one or more other States.” And yet these bills are urged as measures which will prevent discriminations and secure equality in the shipments of freight by rail!

Mr. REAGAN. If my colleague on the committee will allow me I would like to ask him a question.

Mr. BOYLE. Certainly.

Mr. REAGAN. I wish to ask whether under the provisions of the bill he is criticising all commerce originating in another State than New York or another State than Pennsylvania, passing over the New York Central or the Pennsylvania Railroad, would not be subject to the provisions of this bill, whether it reached a terminal point on these roads by water or by land—whether we are not protecting commerce, not regulating railroads?

Mr. BOYLE. I understand the view of the chairman, and think I will be able to show that he is mistaken. I say this, I trust, in no improper spirit, but with due deference for his intimate and long ac-

quaintance with this subject, and for his great ability. This legislation is intended to affect only interstate commerce carried by rail. Although it may pass from one State to another, yet if carried outside of a State by water, and wholly within it by rail, it will not be subject to the provisions of these bills.

Mr. REAGAN. I see that we are not likely to agree, but I wish the House to understand my suggestion. It is that commerce which originates in one State and passes through another, whether by one or many railroads, or by water a part of the way and by land another part of the way, is interstate commerce. But under the rule which my friend lays down it can not be protected.

Mr. BOYLE. Take the case I have stated, of commerce originating in Illinois, carried by water to Buffalo, and there first carried by rail from Buffalo to New York by the Central Railroad. Is it within the provisions of this bill?

Mr. REAGAN. It is distinctly subject to the provisions of this bill. If you put a cargo of commerce on a ship at Chicago, land it at Buffalo, and there transfer it to a railroad, it is interstate commerce from the point of shipment to the point of destination; and when it goes upon the New York Central Railroad is to be controlled by the provisions of this bill like all other commerce between the States. I repeat, it is not the railroads that we regulate; it is the commerce which we protect.

Mr. BOYLE. The gentleman will understand that I do not deny that Congress has the same power to regulate commerce passing partly by water and partly by rail that it has to regulate commerce carried entirely by rail. All I have said and all I now say is that such commerce carried partly by water and partly by rail, where such rail carriage is wholly within one State, is not covered by the provisions of this bill. And the best evidence on the point of difference between the gentleman and me is the language of the bill itself. I will read it. It is the first section:

That all charges by any person or persons engaged alone or associated with others in the transportation of property *by railroad* from one State or Territory to or through one or more other States or Territories of the United States, or to or from any foreign country, shall be reasonable for such service. *

The case I have put is one in which property does not pass by railroad from one State to another; it is a case in which persons are engaged neither alone nor associated with others "in the transportation of property by railroad from one State or Territory to or through one or more other States or Territories." It is an association, if at all, between a carrier by water outside of the State and a carrier by rail wholly within one State. I do not differ with the gentleman as to what constitutes interstate commerce; my difference with him is only as to the meaning of this bill, and in support of my view I submit the bill itself.

THE COMMISSION.

I come now, Mr. Speaker, to that part of the committee's bill which provides for the establishment of a commission of interstate commerce. It is to this that many gentlemen give their most earnest support. It is to it I am chiefly opposed. The chairman of the committee [Mr. REAGAN] regards the charging of unreasonable rates, the allowance of rebates and drawbacks, and the maintenance of pooling, &c., as crimes, and he says so, and proposes to punish them as other crimes are punishable. He also regards them as civil injuries, and he offers to give to the injured party direct remedies in the way of damages, to be sued for by himself, and recovered as other recoveries are had for injuries done. His meaning and his purpose there is no misunderstanding. Another gentleman who supports the committee bill characterizes the chairman's plan as "the cast-iron, inflexible, perfunctory method, terrible on paper as an army with banners. but practically as ineffectual as a Chinese gong." He further says:

But I predict it would be a dead letter so far as being of any use to the people from the day of its passage if it stood alone; or that if enforced except through the elastic and automatic adaptation of the commission recommended in the bill of the committee, it would only embarrass business, increase rates, and add to the burdens of the people's cost of transportation.

And he says further, after explaining the commission feature of the bill:

Compare with this elastic, self-adjusting, and sufficient system the stunted and utterly ineffectual method of a dormant statute, too expensive and too like a boomerang for any poor shipper, whose property is at the mercy of the humor of the railroads, to set in motion.

Certainly this commission—this automatic, elastic, self-adjusting, sufficient commission, so enthusiastically described by my distinguished friend from Massachusetts, Governor LONG, which is to stand between the oppressor and the oppressed; which is to do for the poor shipper what in this free country, where the courts are open to all alike, he cannot do for himself; which is to correct evils which have ruined individuals and communities—must be a very beneficent and a very powerful body. Let us see.

The commission is to consist of three persons to be appointed by the President for the term of six years, and each commissioner is to receive a salary of \$7,500. It is to have a clerk at a salary of \$2,500, and an accountant at a like salary. It is also to have such "additional clerical, engineering, expert, or other service" as it may request and the Secretary of the Interior may be willing to furnish. Actual and necessary traveling and other expenses for the commission and its employés are to be paid, and they are to be allowed to pass and repass over any railroad engaged in interstate commerce free of charge; but whether with or without the consent of the railroad company is not stated. It is to be provided with an office in Washington, but may go

into any part of the United States to discharge its duties, or it may send one of its own members or its clerk, or anybody else, into any part of the United States to perform and discharge its duties, and to this end may delegate to the person thus sent all the powers of the commission. Fortunately, with such liberality as to the delegation of power, the power to be delegated is not very great.

The establishment of a commission was urged by nearly every railroad man who appeared before the Commerce Committee, and I do not wonder. As provided for in this bill, it will not only be without power to aid the shipper, but will be an actual obstruction in his way when he seeks redress for injuries done him by a railroad company.

A private individual or a firm may complain to the commission. Unless a United States district attorney, or a State district or county attorney, or other corresponding officer, certifies that "he has examined the facts and in his opinion the complaint is well founded" (for which he must, of course, be paid by the party complaining), the commission may utterly ignore and disregard the complaint. If the complaint be made by a board of trade or other commercial body, or be backed by a district attorney, the commission is required to proceed with an examination.

Mr. STEWART, of Vermont. Will you allow me one moment?

Mr. BOYLE. Certainly.

Mr. STEWART, of Vermont. The bill provides that the commission may take notice of such complaint.

Mr. BOYLE. Yes; but it is not obliged to do so unless the individual complaint is backed by a district attorney.

Mr. STEWART, of Vermont. Or a board of trade.

Mr. BOYLE. Yes; as I have said, or a board of trade.

From my knowledge of district attorneys I see no reason why we should interpose them between the injured individual and the commission. Why shall any person who feels himself aggrieved ask the permission of anybody to have his complaint inquired into? Why shall this commission not be open to all alike, the high and the low, the rich and the poor, as the courts of the country are? Why shall a district attorney be paid, in order to secure a hearing?

Mr. LONG. Do I understand the gentleman from Pennsylvania to say that a person can not apply to the commission?

Mr. BOYLE. No; but that the commission may disregard the application unless backed by a district attorney.

Mr. LONG. That is to say, that the commission may exercise its judgment.

Mr. BOYLE. Yes.

Mr. LONG. It is not a fair presumption, is it, to say the commission would act unwarrantably?

Mr. BOYLE. I do not know what the commission might do. The failure to have the indorsement of the district attorney would itself discredit the complaint in the eyes of the commission at the outset. I maintain the right of all men alike to be heard—individuals as well as boards of trade, and individuals without a district attorney as well as with one. What would be thought of a court required to hear one man and not another, both complaining of a like wrong?

Say the commission concludes to examine. Say the wrong complained of occurred in California, or Nevada, or Texas, or Mississippi, or Maine. The commission would not go to the place unless the weather was suitable. It would exercise the power of delegation before referred to. Gentlemen who favor the commission seem to be largely influenced by the success of certain State railroad commissions. They forget that the United States is bigger than the State of Massachusetts, great as it is. They forget that an inquiry which might readily be made in a State by a State commission may be attended with very great difficulty when made in a remote State by a commission located at Washington.

Mr. MILLS. Let me ask the gentleman what are the powers of the commission for the correction of these evils.

Mr. BOYLE. I will state in a few minutes.

Mr. CHACE. If it will not interfere with the argument of my friend I wish to ask him a question, as he seems to be in favor of Judge REAGAN'S substitute.

Mr. BOYLE. I am not conscious of having said anything that would warrant that inference. In response to the inquiry of the gentleman from Texas [Mr. MILLS] I say that with enforcing the remedies given, with imposing the penalties proposed by this bill, the commission has nothing whatever to do. The wronged party must go into the courts single-handed and alone, as he would have to do if no commission existed, and meet these giant and terrible corporations face to face. He must employ an attorney and bring his action like other people who complain of wrong. He must make his information and prosecute for the crime committed just as he would without any commission.

The reason given for the establishment of a commission is that shippers are not able to contend with the railroad companies. Who are the shippers? They are the merchants, the manufacturers, the corporations of the country. You leave the widow whose husband and the children whose father has been killed by a railroad company, the poor employé who has been maimed and ruined while in its service, to sue those companies themselves and to meet and contend with them without the backing of the Federal Government or any other government, while you pretend to give to the capitalists of the country the moral backing at least of a great, imposing, well-paid commission. I

do not agree that suitors with railroad companies are at a disadvantage in the courts of the country; much less do I agree that support shall be given to the strong which is denied to the weak.

Let it be understood that with what are called the remedial provisions of these bills, those portions giving remedies for injuries done and imposing punishments for wrongs committed, the commission has nothing whatever to do. All that is claimed for it is that it may aid in preventing the continuance of the wrong. Again, let us see——

Mr. PETERS. Will the gentleman permit me to ask this question: Does not the provision in relation to injunctions distinctively enjoin the railroads from doing the wrong against the individual?

Mr. BOYLE. I have said nothing to the contrary. But it is not done at the instance of or through the commission.

Mr. PETERS. You say there is no remedy to the individual.

Mr. BOYLE. No; there are remedies which he must himself seek. I say the commission does not intervene to give the individual a remedy.

Mr. PETERS. It gives it by injunction.

Mr. BOYLE. No; he must obtain that for himself also. The commission stops short of that. Nor does it intervene to enable him to obtain compensation for wrongs done.

Mr. PETERS. Other provisions of the law do compensate him.

Mr. BOYLE. Undoubtedly; but at his own suit, and without aid from the commission.

Mr. WARNER, of Ohio. That is, the commission has no power to enjoin.

Mr. BOYLE. No, nor any other power except to inquire. The commission upon complaint made has the power to cause a copy of it to be served on the party complained of, and to require an answer. After answer, it may, "if it shall think fit," institute an inquiry as to the matters of fact alleged in the petition, "in such mode and by such persons or means as it shall think proper." If it finds the complaint sustained, it is to "make and record its report in writing." Within twenty days it is to serve a copy of its report and findings on the offending railroad company, with notice to desist from the wrong, and it is also to deliver to the United States district attorney for the district in which the act complained of occurred a similar copy.

And here the functions of the commission absolutely terminate.

If the offending company fails to comply with the commission's notice, the district attorney is to commence proceedings in the name of the injured party for an injunction. He is not compelled to do so; and, as no fees are provided for the service, it is not likely he will do so unless the injured party should compensate him. And if he is to pay he should be allowed to select his own lawyer, as he is permitted to do if

the district attorney fails to proceed for ten days. And what is the court to do? Is it to enforce the finding of the commission? Not at all. Is the finding of the commission of any value before it as evidence or otherwise? Not at all. The court is to "proceed in a summary manner to ascertain whether the said report and findings are true." That is to say, a proceeding in equity is to be commenced and carried on in the ordinary way after the commission has reported, except that the inquiry is to be confined to the findings of the commission. Everybody must have notice and an opportunity to appear, and, as the question of fact is to be inquired into, everybody, including the railroad company, must be allowed to produce witnesses. In other words, the injured party is just where he was when the inquiry before the commission commenced, except that the scope of inquiry is limited by the findings of the commission, perhaps greatly to the prejudice of the injured party. And the proceeding is carried on at the risk of the injured party. District attorneys do not work for nothing. There is no provision here for paying them.

Mr. PETERS. If the law makes it the duty of the district attorney to do this the private party can not be made to pay him.

Mr. BOYLE. Nor can the United States.

Mr. PETERS. I agree with you there.

Mr. BOYLE. Nor can the district attorney be compelled to perform the labor without compensation. The bills do not undertake to so compel him.

Mr. MILLS. Suppose the party making the complaint loses—he pays the costs.

Mr. BOYLE. Yes; I have said that the proceeding is carried on at his risk. The bill provides that the "court may, in its discretion, award or deny costs to any party to such proceeding."

Where is the good of the commission? The injured party finds himself worse off at the end of its inquiry than at the beginning. Without it he might have commenced proceedings in equity for an injunction in any court of competent jurisdiction. He might have made the scope of his complaint and the subject of inquiry as broad and comprehensive as he liked. He could have had the whole subject disposed of, and not only a preliminary but a permanent injunction before the commission completed its utterly useless inquiry. Under the commission scheme he is confined to one court, the United States circuit court of the district in which the wrong is alleged to have been done. He must wait on notices to the railroad company; he must wait the pleasure of the district attorney, and then either pay him or employ his own lawyer. And then he must limit his inquiry to the findings of the commission.

Surely this scheme was devised by the railroad companies themselves. I have said that their attorneys advocated it. It seems hardly possible that any person other than a railroad manager could have suggested a device so entirely in the interest of the railroad companies. I can see how such a commission might be of great service to itself and its employés, but how it is to help the suffering shipper does not appear.

THE QUESTION OF POWER.

I do not intend to submit an argument as to the power of the Federal Government to enact this legislation. My respected friend before me, the chairman of the committee, entertains no doubt whatever of the existence of this power. My colleague from the Pittsburgh district [Mr. HOPKINS] is equally clear that the Federal Government has full power to enact the legislation here proposed; that is to say, that the Federal Government, under the clause of the Constitution giving Congress power to regulate commerce with foreign nations and among the States, has authority to control the entire railroad system of the country; for it comes to that. Let me make a suggestion—I make it only by way of suggestion, without committing myself irrevocably. Under this same clause of the Constitution the Federal Government has exercised all the power it has ever claimed in regard to the shipping of the country. It has prescribed, I believe, the manner of building ships, how they shall be manned, how they shall be commanded, how they shall enter, clear, &c.

Everything that Congress has enacted in relation to the shipping of the country has been based on that clause of the Constitution giving Congress the power to regulate commerce with foreign nations and among the several States. Control of the navigable rivers of the country is derived from the same provision; so, too, is the right to authorize bridges over navigable waters. Our entire regulation of shipping and seamen and steamboats, and inspection of steam-engines and everything of that kind, finds its warrant in this clause. Now, I ask gentlemen on this side of the Chamber whether they are willing to extend this power to the control of the railroads of the country? If the same clause which has warranted our legislation in regard to the shipping justifies the exercise of like power and control over the railroads, you may have Congress directing what kind of signal-lights the railroad trains shall carry, how the trains shall be manned, how they shall be run; in short, doing everything as to railroads and railroad trains that it has done and is doing as to ships upon the ocean and navigable rivers and the ships and boats thereon.

It is claimed broadly that Congress has the same power and control of the instrumentalities of interstate commerce as of the instrumentalities of foreign commerce, and that there exists in Congress the same

power to control the railroads, because they are instruments of commerce as the shipping of the country. Are you gentlemen willing to take this step toward centralization? Are you willing to confide to the Federal Government the control of the entire railroad system of the country? It will extend to every railroad in the United States, for there is not one, however short or inconsiderable, which does not at some time, and frequently, carry commerce passing from one State to another.

The Democratic party has seen with alarm the strides toward centralization made by the Republican party while it has had control of the Federal Government. It has labored zealously to preserve and maintain the rights of the States, and to confine the General Government to the exercise of the limited functions which were committed to it by the framers of the Constitution. But to my knowledge no movement has ever been made by the Federalists or their successors which would add so much to the power of the National Government as this, and no doctrine has ever been enunciated by them more destructive of State rights and local self-government.

Mr. WARNER, of Ohio. Will the gentleman yield for a question?

Mr. BOYLE. With pleasure.

Mr. WARNER, of Ohio. You admit, as I understand, that the General Government has the right to control interstate commerce except when it is carried on railroads.

Mr. BOYLE. I have made no such distinction.

Mr. WARNER, of Ohio. But is not that the logic of your position?

Mr. BOYLE. I have not gone so far. I wish to be held responsible for no more than I say. As I have said, it is a good deal by way of suggestion, and although I may use strong expressions I am not to be understood as committing myself irrevocably to any particular view as to the powers of Congress over railroads as instrumentalities of interstate commerce.

Mr. REAGAN. I will ask my friend to allow me a suggestion. The courts of the country, State and Federal, have, without exception, decided that the States can not regulate commerce between the States. Now, the gentleman assumes that the Federal Government can not do it. Does he recognize the principle that the railroads are a power uncontrolled and uncontrollable by law, either State or Federal?

Mr. BOYLE. No; I am not an advocate or apologist for the railroads, and never have been in any public position I have had the honor to hold.

I am not willing to concede that the railroads of the country, great as they are and strong as they are, can not be controlled by the law. I do not admit the correctness of the gentleman's statement. I believe that the humblest court in the country, State or Federal, can put its

hand on a railroad company and control it, within the limits of the law.

Mr. STEWART, of Vermont. You mean under the common law?

Mr. BOYLE. The courts are as strong to enforce the common law as the statute law. They have the same power, in this respect, as to both.

That the Federal Government has power to regulate commerce among the States I have never doubted. I could not question it without flying in the face of the plain letter of the Constitution. But, what is this power—to what does it extend?

In all that the Federal Government has thus far done in the regulation of shipping, in the control of the foreign or interstate commerce of the country, it has never, so far as I am aware, undertaken to prescribe on what terms that commerce shall be carried. If Congress has ever said that ships carrying commerce to or from foreign countries shall do so at certain rates, I do not know it. If Congress has ever legislated at all with reference to the terms between the shipper and the carrier, I do not know it. It is assumed here that because Congress has power to regulate commerce among the States, therefore Congress has the power to prescribe the terms upon which the carrier shall be compelled to carry that commerce. But this is begging the whole question—it is assuming the very point in doubt and controversy.

Mr. REAGAN. Mr. Speaker, if the gentleman will allow me, I will state that if he refers to the Revised Statutes of the United States he will discover that Congress has been exercising the right of regulation of transportation for many years. A law is now upon the statute-book upon that subject.

Mr. BOYLE. I am not cognizant of any legislation by Congress touching the matter to which I have been referring—the terms, as between shipper and carrier, upon which commerce shall be carried. It may be said this bill does not do that. But this bill, Mr. Speaker, asserts and is bottomed on the power to do it. This bill says in its first section that the rates for carriage shall be reasonable. Well, if Congress has the power to declare rates shall be reasonable, then Congress has the right to determine what are reasonable rates. One follows the other inevitably. That ground is taken by the gentleman from Kansas [Mr. ANDERSON], who has been so earnest in his advocacy of these measures. He maintains that Congress has the right to prescribe the price railway companies may charge for the transportation of commerce between the States.

Mr. Speaker, no case has been cited touching the power of Congress to regulate interstate commerce from which it can be gathered that any court has held that that power would warrant the Federal Government in interposing between shipper and carrier, to the extent

of prescribing how commerce shall be carried by rail or what rates shall be charged for its transportation. To my knowledge there is no such case. Congress has the right under the Constitution to regulate and control interstate commerce. That is, to facilitate it, and to prevent States from placing obstacles in the way of carrying it on. It has the power to prevent the imposition of burdens or taxes upon it by States.

Mr. REAGAN. If the gentleman will permit me, I will again interrupt him.

Mr. BOYLE. Certainly; I yield for that purpose.

Mr. REAGAN. There have been repeated decisions, Mr. Speaker, in which the courts have said that under the provision of the Constitution granting to Congress the power to regulate commerce the whole power is given to Congress over that commerce, and that it is ample and complete in every respect. That as every State has the power to regulate the commerce within the boundaries of the State Congress has like power under the Constitution to the regulation of interstate commerce. That has been decided over and over again by the courts.

Mr. BOYLE. The gentleman is not to understand me as dissenting from that proposition.

Mr. STORM. If my colleague will permit me to interrupt him for an instant I would like to ask him whether he takes into account the difference between commerce upon the high seas and navigable rivers and interstate commerce as carried on by railroads? In the former case, the channels of commerce are open to all, the regulation of price would not be necessary, but in the other case it is not so, and it is important this distinction should be taken.

Mr. BOYLE. I may say to my colleague that the distinction he makes might afford a reason for Congress interposing, if it had the power; but it does not by any means determine that Congress has or has not the power to make the same provision in one case as in the other.

Mr. REAGAN. Let me go on a little further. The power to regulate in a State rests upon the common law principle that common carriers or persons engaged in any employment in which the public has an interest, and especially where the franchise is derived from the political authority, are subject to the control and regulation of that political authority, such as in the case of hackmen, public ferrymen, &c.

Mr. BOYLE. I am not disposed to dispute that. The States have the right to control common carriers within their borders, but it does not spring from any right to regulate commerce. They have the same power to regulate and control all persons engaged in a public or quasi-public business, whether relating to commerce or not. The States do this because they possess general governmental powers. Where a man

sets up to carry for the public generally then he is subject to the control of the State to the extent, at least, that his charges shall be reasonable.

Mr. REAGAN. I only mentioned the point to show the authority in the State for the regulation of this subject. The courts have decided that Congress has the same power over interstate commerce that the particular States have over local commerce.

Mr. BOYLE. Let me suggest to the gentleman from Texas a palpable difference. The railroad companies of the country, to which this law is to be applied, did not derive their existence from the Federal Government. These railroads you intend to regulate by regulating the interstate commerce on them do not owe anything to the Federal Government as their creator. They were created by the States. The power which creates a corporation may impose such burdens and conditions upon it as to it may seem good. It is clear to me, therefore, that when the gentleman claims the same power for the General Government over State corporations exercised by the States which created them the reason for his claim utterly fails.

Mr. LEWIS. How about the Texas Pacific and the Northern Pacific Railroads?

Mr. BOYLE. I was alluding to the general system of railroads, not to these. But the principle I have stated applies to them, and they happily illustrate it. The Federal Government created them; it gave them all the powers they have; it is their sovereign. Will anybody say it can exercise like control over railroads entirely within a State, created by the State, because they engage in the carriage of interstate commerce, that it can over the Pacific roads?

Mr. REAGAN. If the gentleman will allow me, I will state that that doctrine would lead to the conclusion that a State, by creating a corporation, can take from Congress its constitutional power to regulate commerce between the States. I am satisfied my friend from Pennsylvania will hardly assent to that proposition.

Mr. BOYLE. By no means. The distinction is clear; it comes to this, after all: what is embraced within the regulation of commerce?

Mr. BARKSDALE. If my colleague will permit me a moment I will call his attention to a case in point, and cite a decision bearing directly upon this point.

Mr. BOYLE. Certainly; I will yield to my friend from Mississippi.

Mr. BARKSDALE. I refer now to the power of Congress to regulate commerce among the States, and cite the case of the Pensacola Telegraph Company against the Western Union Telegraph Company. Chief-Justice Waite, in delivering the opinion of the court, said:

Congress has power to regulate commerce with foreign nations and among the several States. The powers thus granted are not confined to the instrumentalities of commerce, or the postal service, known or used when the Constitution

was adopted, but they keep pace with the progress of the country, and adapt themselves to new developments of time and circumstance; they extend from the horse with its rider to the stage-coach, from the sailing vessel to the steamboat, from the coach and the steamboat to the railroad, and from the railroad to the telegraph, &c.

Mr. HERBERT. And the telegraph company to which the gentleman alludes, and whose rates were in question, was a corporation created by a legislative act of the State of Florida.

Mr. BARKSDALE. Yes, sir.

Mr. BOYLE. That, however, is only, as the gentleman will perceive, a statement of the general principle involved. It amounts to saying that the power of Congress to regulate commerce is not confined to transportation by horses and mules, which were the principal modes in operation at the time the Constitution was framed and to a large extent were the only means used at that time for the carriage of commerce by land.

Mr. BARKSDALE. But it declares that the power exists in Congress.

Mr. BOYLE. Undoubtedly the power to regulate interstate commerce rests in the Federal Government under its Constitution, and is supreme and exclusive. I do not wish to be understood as denying the power of Congress in the premises; but I maintain that this power does not include the power to regulate the specific charges for freight by railroad companies created by States and exercising their corporate functions within the States which created them. A State in granting a charter to a railroad company may limit the rate of charges, but that being once done the State has no power to change that provision, unless the right to do so is reserved in the charter or by general law or constitutional provision.

Mr. HENDERSON, of Iowa. Will the gentleman permit me to ask him a question?

Mr. BOYLE. Certainly.

Mr. HENDERSON, of Iowa. When a railroad company accepts a charter from a State are not the powers conferred upon the road measured by the provisions of the Constitution of the United States?

Mr. BOYLE. Undoubtedly the Constitution of the United States is the supreme law of the land. That all understand.

Mr. HENDERSON, of Iowa. Yes; but in accepting a grant of privileges or powers from the State are they not bound by the provisions of the Constitution of the United States?

Mr. BOYLE. Yes; the Constitution of the United States may properly be considered a part of every charter ever granted by a State, because the charter and all State laws are subject to it.

And if you find in this clause of the Constitution (and this is, after all, a matter of interpretation) that Congress has power to regulate the charges which the carrier may make against the shipper, then the power

exists, whatever may be in the charter, for the corporation takes its franchises subject to whatever power the Federal Government may have under the Constitution. But what I tried to say is that the power to regulate the charges by a State stand upon an entirely different footing.

The corporations, I repeat, so that I may not be misunderstood, are not created by the Federal Government. They do not derive their franchises from it. They are subject, of course, to the Federal Constitution and laws made in pursuance of it; but the Federal Government is not its sovereign in that sense. The State government may fix the charter, and in fixing it put in such restrictions as it chooses; and of course the corporation takes the grant *cum onere*. More than that, in my judgment, a State government, having created a corporation, might make such changes in its charter and subject it to such control as it thought proper, so long as it did not violate that clause of the Constitution which forbids a State to impair the obligation of a contract.

Now, sir, I recognize the existence of the evils complained of and the evils intended to be remedied by this bill. And if a plan can be devised within the powers of the Government, State or Federal, to prevent railroad corporations from making unreasonable charges or discriminations between shippers by granting one facilities or rates which are denied to another, it shall have my hearty support. I am most anxious to forward any such measure. But I entertain so much doubt, at least as to the power of Congress to enact this legislation—and if the power exists, I see so much objection to giving to the Federal Government practical control of all the railroads of the country—that I hesitate to support either of the measures now before the House. [Applause.]